IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 793 of 2005

Mrs.Imaculate J. Crasto .. Appellant

versus

M/s.Anita Associates & ors. .. Respondents

...

Mr.D.H. Mehta with Mr.N.M. Shah for the appellant.

Mr.Denzil D'Mello for the respondent no.2.

CORAM : B.H. MARLAPALLE,J

DATED : 12th September 2005

P.C.:

1. Heard Mr.Mehta, the learned counsel for the appellant.

2. In S.C. Suit no.1294 of 2005, Notice of Motion no.1107 of 2005 was taken out for an injunction and during the course of hearing of the said Notice of Motion, an issue regarding the

jurisdiction of the Court was also agitated by the defendants. By the impugned order dated 5th April 2005, the Notice of Motion has been dismissed and the preliminary issue regarding jurisdiction to try the suit has been answered in favour of the appellant plaintiff. However, the learned Judge proceeded to consider the D.C. Rules, Building Regulations of the Mumbai Municipal Corporation and the T.P. Rules along with other statutory regulations. The trial Court held that under Rule 29(1)(a) the minimum open space of 3.6 meters for the residential building was required to be kept and the plaintiff had instead kept open space only upto 1.5 meters on all the sides. The Court proceeded to record its observations in paragraph nos.24 and 25 which were not called for as the said issues squarely fell under the jurisdiction of the Planning Authority i.e. Mumbai Municipal Corporation. It was not for the Court to enquire into the compliance of Rule 29(1)(a) of the the Development Rules. As and when the plaintiff submits the plans for approval to the planning authority, the same plans are required to be examined in keeping with the requirements of Development Rules and it is for the planning authority to approve or reject such plans.

3. While the order dismissing the Notice of Motion and recording finding on the preliminary issue, does not call for any interference, it is clarified that the observations made by the Court below in paragraph nos.23 to 25 of the impugned order would not come in the way of the plaintiff to submit an application to the planning authority and the planning authority will have to consider the plans as per the Development Rules and without being influenced by these observations.

4. Appeal disposed of.

B.H. MARLAPALLE, J